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STATE FOR WHA/EPSC
STATE PLEASE PASS TO USTR FOR MARY SULLIVAN
COMMERCE FOR SARA McDOWELL

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TAGS: ECON ETRD PGOV KIPR CI
SUBJECT: MISSION PROMOTION OF IPR PROTECTION IN CHILE

REF: A. SANTIAGO 1424

1B. SANTIAGO 2256
1C. SANTIAGO 2315
1D. WARD/YANG/SHERIDAN E-MAILS
1E. SANTIAGO 2331
1F. SECSTATE 175907

Classified By: Ambassador Craig Kelly for Reasons 1.4 (b) and (d)

11. (SBU) Summary. One of the Mission's top priorities in 2005 has been to focus attention in Chile on the continuing failure to implement full protection of intellectual property. The overall U.S.-Chile relationship, including the bilateral trade relationship, is better than ever, and the U.S.-Chile Free Trade Agreement has been a major success for both sides. However, there is poor respect in Chile for IPR, with spotty understanding in government circles, competing political and commercial interests, and courts generally unprepared to deal with cases. To address this and to support U.S. firms harmed by IPR violations, the Mission has undertaken a number of initiatives highlighted below. Progress has been incremental at best. End Summary.

12. (SBU) By most measures, the U.S. bilateral relationship with Chile is better than ever. With the Free Trade Agreement that came into force on January 1, 2004, the trade relationship is stronger than ever, with bilateral trade up by double digits. In addition to trade, related cooperation under the FTA on labor and environmental protection is going smoothly. The one dark cloud hanging over the trade relationship is Chile's continuing failure in IPR enforcement. The lack of Chilean protection for IPR, especially for pharmaceuticals, is significant. Below is a chronological roundup of the main Mission efforts to raise the profile of IPR protection in Chile, and positively shift public and government approaches to IPR protection. In this endeavor - several tugboats trying to turn around the Queen Mary - we have found like-minded advocates in some unexpected places.

Training Judges

13. (U) In May, the Embassy, the University of Chile's Law School and the Chilean Supreme Court jointly sponsored a one-day training workshop for judges who will hear IPR cases. The workshop was financially supported by the Embassy's Public Affairs section and the Mission's inter-agency Law Enforcement Committee. A district judge from Maryland, Andre Davis, and Jason Gull from the Department of Justice's IPR Crime Office traveled to Chile to participate.

Joint Demarches with Swiss

14. (SBU) In meetings with European counterparts, the Ambassador learned that EU countries were encountering the same difficulties with the GOC on IPR issues. While some EU members wanted to work formally with the U.S., in the end they could not obtain clearance from Brussels on the proposed demarche points. However, the Swiss were eager to move ahead separately with the U.S., as their pharmaceuticals have been victimized by the same lack of protection as U.S. firms. The Ambassador and Swiss Ambassador Regli paid three joint calls in June on the Minister of Health, the Foreign Minister and the Under Secretary for Economy (ref A). While the Ambassadors received cordial receptions from all, it was clear that there was no overall Chilean coordinator on this issue. Subsequent to these joint demarches, the GOC did create an inter-ministerial commission to coordinate internally on IPR issues (ref B).

Inter-Agency IPR Commission

15. (SBU) The GOC's inter-ministerial commission is composed of five ministries -- Foreign Affairs, Commerce, Agriculture, Education and Health. The commission has three levels, with technical experts meeting at least once a month. At the vice-ministerial level, there are to be meetings every 45 days, and ministers are to meet under the auspices of the Commission three to four times per year. Carolina Belmar, who is the head of the intellectual property unit at the MFA, told econoff the explicit goal in creating the Commission was to foster dialogue and understanding on IPR issues among ministries (ref B). The Embassy had sent Belmar to the U.S. in September as an IV visitor on an IPR-related program.

IPR Speech to AmCham

16. (U) In September, the Ambassador launched a constructive public initiative, designed to turn up the heat on the GOC, with a speech directly to the business community. At a September 28 meeting of the American Chamber of Commerce, he outlined ten reasons why improved IPR protection was in Chile's own best interest. The speech received extensive press coverage, including editorials of support of the U.S. position. The speech also led to further press interviews over the next month with the Ambassador and other Embassy officers on IPR protection and its benefits.

Follow-up with MFA

17. (SBU) In response to SecState 175907, the Ambassador paid an additional call on FM Walker in September to discuss the Eli Lilly case involving its Straterra product. Walker had not been briefed on the issue, but asked for details outlining the case. Working with USTR, language was drafted and cleared and the information sent on September 28. Since then, the Ambassador has been reassured by Walker that the GOC is working on "addressing U.S. concerns" on IPR protection in Chile, but he has not provided specifics.

Call on the President's Office

18. (SBU) The Ambassador and Swiss Ambassador Regli met with Secretary General of the Presidency Dockendorff in September

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to discuss Chile's inadequate response to our IPR concerns and to seek President Lagos' intervention. After the meeting, Minister Dockendorff sent a written response to Ambassador Kelly assuring him that new Chilean legislation would address the USG's concerns. He also mentioned the creation of the inter-ministerial commission tasked with examining and coordinating the GOC position on IPR. Dockendorff's letter also mentioned the passage of Law No. 19,996, which would adapt Chilean domestic law to meet

international commitments signed by Chile. To date the implementing regulations for this law have not been passed, but the initial assessment we have from pharmaceutical sources who have seen the draft regulations is not encouraging.

Continuing High Level Dialogue

¶ 9. (C) FM Walker told the Ambassador in a follow-up meeting on November 10 that the GOC was continuing to take steps to address our IPR concerns (ref C). Walker said the GOC was improving inter-ministerial coordination, and that progress was imminent on addressing U.S. data protection concerns. Also in November, the Ambassador met with newly-appointed Constitutional Court President Jose Luis Cea Egana (ref E). Cea agreed with the Ambassador that Chile was doing a poor job of protecting IPR.

¶ 10. (C) Summary: Mission-wide efforts have generated some positive responses from the GOC and from the business community in Chile. We believe the Ambassador's interventions and joint demarches with the Swiss have certainly gotten the attention of major players like FM Walker and presidential advisor Dockendorff. We know that President Lagos was fully briefed to discuss the IPR issue during his bilateral meeting with President Bush on the margins of the Summit of the Americas two weeks ago. We will follow up with MFA on the demarche to FM Walker concerning the Eli Lilly drug Stratera (ref F). To date we have not received an answer.

¶ 11. (C) Summary continued: We have seen positive responses both publicly and in private to the Ambassador's September speech to the AmCham. We believe the creation of the GOC's inter-ministerial commission was a direct outcome of the pressure applied by the joint demarches with the Swiss. Despite that, it remains unclear if the GOC has begun to change its fundamental attitude toward IPR protection (i.e. leave it to the companies to take their cases to court). We continue to see violations of patents, most egregiously in pharmaceuticals. Our outreach, training and advocacy efforts will continue, but we see a long and potentially bumpy road ahead before Chile truly changes the way it handles IPR.

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